

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STAND UP AMERICA NOW,
WAYNE SAPP and TERRY JONES,

Plaintiffs,

v.

Civil Action No. 12-11471
Honorable Denise Page Hood

CITY OF DEARBORN and RONALD
HADDAD,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE
DEFENDANTS' MOTION TO STAY DISCOVERY**

Defendants filed a Motion to Stay Discovery pending the resolution of their Motion for Summary Judgment, which has yet to be filed, addressing Plaintiff's facial challenge alleged in their First Amended Complaint as to the ordinance at issue. Plaintiffs respond that they are not only challenging the ordinance on its face, but are also challenging the ordinance "as applied", which requires discovery as to how Defendants applied the ordinance. Plaintiffs assert that Defendants agreed to conduct discovery pursuant to the scheduling conference and order set forth by the Court. (Doc. #15, May 15, 2012 Sched. Order) It is noted that this conference was held prior to the filing of Plaintiffs' First Amended Complaint on July 25, 2012.

Given that Defendants have yet to file their summary judgment motion, there is nothing before the Court that sets forth Defendants' arguments and whether their arguments establish discovery is not required. It is noted that Defendants could have filed a Motion to Dismiss, a Motion for Judgment on the Pleadings or even a Motion for Summary Judgment in lieu of filing an Answer to challenge Plaintiffs' initial Complaint or the First Amended Complaint based on Defendants'

argument that Plaintiffs are only asserting a facial challenge to the ordinance. (See, Fed. R. Civ. P. 12(b)(May be made before filing an Answer) and Fed. R. Civ. P. 56(b)(May be filed at any time)). By its nature, a Rule 56 Motion for Summary Judgment generally requires discovery since the motion is based on “facts” and the Court’s finding of “no genuine dispute as to any material *fact*.” Fed. R. Civ. P. 56(a). Plaintiffs assert they require discovery as to the City of Dearborn’s policy and custom regarding the ordinance and its application. The parties agree to extend the discovery deadline. An amended scheduling order will be entered.

Accordingly,

IT IS ORDERED that the Motion to Stay Discovery pending a ruling on a motion for summary judgment which has yet to be filed (**Doc. No. 20, filed 9/14/2012**) is DENIED without prejudice.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: October 26, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 26, 2012, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager